IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

Cr.A.No.724/2000.

Date of Decision :22nd November, 2007.

State of H.P. …Appellant.

Versus:

Babu Ram. …Respondent.

Coram:
The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for judgment?[1]

For the appellant: Mr.Ashok Chaudhary, Addl. Advocate General.

For Respondent. Mr.R.K.Gautam, Sr.Advocate with Mr.Naveen Bhardwaj, Advocate.

Sanjay Karol, J(Oral).

The present appeal arises out of the judgment dated 2nd June, 1999 passed by Chief Judicial Magistrate, Dalhousie in Criminal Case No.70-II/94 titled as State Vs. Babu Ram acquitting the accused of the charged offence under Sections 279 and 338 of the Indian Penal Code.

As per the case of the prosecution on 22nd November, 1994, the accused was driving bus No.HIC-97 on Sihunta-Kamladi road. When the bus reached a place called as the Chanal bridge, while negotiating a turn leading to the bridge its rear portion hit with the bridge, as a result of which the right arm of a child passenger, Anil alias Bittu broken and had to be amputated. The accident took place due to rash and negligent act of the accused who was driving the bus. Complaint Ext.PW-

---

[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

1/A was received and rukka Ext.PW-9/A was prepared on the basis of which F.I.R No.108/93 (Ext.PW-9/B) was registered with Police Station, Chuwari under Sections 279 and 338 of the Indian Penal Code. The spot map (Ext.PW-9/C) was prepared and the photographs Ext.P-1 to Ext.P-5 were also taken. The bus was impounded vide seizure memo Ext.PW1/B and the statements of the witnesses were also recorded. The injured was got medically examined and the disability certificate mark-X was obtained.

On the completion of the investigation, the challan was presented in the Court for trial and the notice of accusation was put to the accused under Sections 279 and 338 of the Indian Penal Code. The accused pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined nine witnesses and the statement of the accused under Section 313 Cr.P.C. was also recorded.

Based on the material on record, the court below acquitted the accused of the charged offence on the ground that the prosecution had failed to prove its case beyond reasonable doubt and from the statements of the spot witnesses it could not be concluded that the accused was driving the bus in a rash and negligent manner.

Khelo Ram (PW-1) has not witnessed the occurrence of the accident. He has admitted that his testimony is based on hearsay evidence and the accident did not take place in his presence. Shri Yash Pal (PW-2) has deposed that when the driver was negotiating the curve, the bus got hit with the

channel of the bridge. This witness has stated that the bus was in a high speed but in his cross-examination he has admitted that he was standing in the middle of the bus from where could not see anything either in the front or at the back. His testimony, therefore, is of not much significance as even he has not deposed that the accused was driving the bus in a rash and negligent manner. Mukhu Ram (PW-3) has deposed that when the bus was negotiating the curve at the Chanal bridge, the back-side of the bus got hit with the bridge. He has clearly stated that the accident did not occur due to the fault of the driver. This witness was declared hostile and in his cross-examination by the Public Prosecutor nothing has come out which would prove the guilt of the accused. He has categorically denied the suggestion, put to him by the Public Prosecutor, that the arm of the child was amputated due to the negligence on the part of the driver. He has also not identified the accused to have driven the vehicle in question at the relevant time.

Smt.Sarala Devi (PW-4) is the mother of the injured child. Even she has not deposed that the accused was driving the bus in a rash and negligent manner. She has stated that when the driver of the bus was negotiating the curve at the Chanal bridge, the bus hit with the bridge as a result of which the arm of her child got amputated. This witness, in cross-examination could not specify the speed at which the bus was being driven. Kamal (PW-7) is the spot witness, who has corroborated the version of PW-4. However, in his cross-examination he has categorically admitted that at the time of

the accident he was in the middle of the bus from where nothing was visible either in the front or in the back. This witness was declared hostile and in his cross-examination by the Public Prosecutor nothing has come out which would show the complicity of the accused with the commission of the offence. Dr.Ajay Pathania (PW-8) has deposed with regard to the injury and disability suffered by the child. Arun Jit (PW-5) is the photographer who has taken the photographs. Om Parkash (PW-6) Clerk of the transport department has proved that the accused was deputed to drive the bus in question at the relevant time. Bahadur Singh (PW-9) is the Investigating Officer who has proved on record the F.I.R., rukka and also the statements recorded during the course of the investigation.

From the perusal of deposition of the aforesaid witnesses one thing is clear that the accused was driving the bus at the time when the accident took place. It has come on record through the statements of PW-7 and PW-3 that the place where the accident occurred, the curve leading to the Chanal bridge is quite narrow. It is also proved that the child was injured in the accident and his arm was amputated.

Out of the nine witnesses, PW-2, PW-3, PW-4 and PW-7 were traveling in the said bus. PW-3 and PW-7 have been declared hostile and have categorically stated that the accused was not driving the vehicle in a rash and negligent manner. PW-2 has admitted that at the time of the accident he was in the middle of the bus and could not see anything either in the front or in the back. From his statement, it cannot be said that the

accused was driving the vehicle in a rash and negligent manner so as to endanger the human life or likely to cause any injury to the minor child. Even PW-4 has not stated that the accused was driving the vehicle in a rash and negligent manner. Through the statement of PW-4, it has come on record that the child was sitting on her lap. The possibility of the child taking out his arm out of the bus at the time of accident is not ruled out. Unfortunately the child got hurt and his arm had to be amputated. However, simply because an accident took place by itself would not be a ground to convict the accused. The prosecution had to prove its case beyond reasonable doubt.

The Court below has acquitted the accused of the charged offence. The material on record has been appreciated in its entirety. There is nothing on record to show any perversity. In the facts and circumstances of the case, I see no reason to interfere with the judgment of the trial Court. The appeal is accordingly dismissed. The bail bonds are discharged.

(Sanjay Karol),
Judge.

November 22, 2007(R)